

for transfer to the new court system of cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11] pending at the end of Sept. 30, 1983, in the courts of bankruptcy continued under section 404(a) of Pub. L. 95-598, with certain exceptions, and cases and proceedings arising under or related to cases under Title 11 pending at the end of July 9, 1984, and directed that civil actions pending on July 9, 1984, over which a bankruptcy court had jurisdiction on July 9, 1984, not abate, but continuation of such actions not finally determined before Apr. 1, 1985, be removed to a bankruptcy court under this chapter, and that all law books, publications, etc., furnished bankruptcy judges as of July 9, 1984, be transferred to the United States bankruptcy courts under the supervision of the Director of the Administrative Office of the United States Courts, was repealed by Pub. L. 98-353, title I, §122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

## CHAPTER 91—UNITED STATES COURT OF FEDERAL CLAIMS

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| 1505.         | Indian claims.   |
| [1506.]       | Repealed.]   |
| 1507.         | Jurisdiction for certain declaratory judgments.  |
| 1508.         | Jurisdiction for certain partnership proceedings.  |
| 1509.         | No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties. |

### HISTORICAL AND REVISION NOTES

#### 1949 ACT

This section inserts in the analysis of chapter 91 of title 28, U.S.C., item 1505, corresponding to new section 1505.

### AMENDMENTS

1992—Pub. L. 102-572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516, substituted “UNITED STATES COURT OF FEDERAL CLAIMS” for “UNITED STATES CLAIMS COURT” as chapter heading.

1984—Pub. L. 98-369, div. A, title VII, §714(g)(3), July 18, 1984, 98 Stat. 962, added item 1509.

1982—Pub. L. 97-248, title IV, §402(c)(18)(B), Sept. 3, 1982, 96 Stat. 669, added item 1508.

Pub. L. 97-164, title I, §133(e)(2)(B), (f), (h), (j)(2), Apr. 2, 1982, 96 Stat. 41, substituted “UNITED STATES CLAIMS COURT” for “COURT OF CLAIMS” in chapter heading, substituted “Liquidated damages withheld from contractors under Contract Work Hours and Safety Standards Act” for “Penalties imposed against contractors under eight hour law” in item 1499, and struck out items 1504 “Tort Claims” and 1506 “Transfer to cure defect of jurisdiction”.

1976—Pub. L. 94-455, title XIII, §1306(b)(9)(B), Oct. 4, 1976, 90 Stat. 1720, added item 1507.

1960—Pub. L. 86-770, §2(b), Sept. 13, 1960, 74 Stat. 912, added item 1506.

Pub. L. 86-726, §4, Sept. 8, 1960, 74 Stat. 856, substituted “Patent and copyright cases” for “Patent cases” in item 1498.

1954—Act Sept. 3, 1954, ch. 1263, §43, 68 Stat. 1241, inserted “; actions involving Tennessee Valley Authority” in item 1491 and struck out item 1493 “Departmental reference cases”.

1949—Act May 24, 1949, ch. 139, §86, 63 Stat. 102, added item 1505.

### RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

See Appendix to this title.

### CROSS REFERENCES

District courts, concurrent jurisdiction of actions or claims not exceeding \$10,000, see section 1346 of this title.

Organization of Court of Federal Claims, see section 171 et seq. of this title.

Procedure in Court of Federal Claims, see section 2501 et seq. of this title.

### § 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) Both the United<sup>1</sup> States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids

<sup>1</sup> So in original. Probably should be “United”.

or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

(June 25, 1948, ch. 646, 62 Stat. 940; July 28, 1953, ch. 253, § 7, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 44(a), (b), 68 Stat. 1241; Pub. L. 91-350, § 1(b), July 23, 1970, 84 Stat. 449; Pub. L. 92-415, § 1, Aug. 29, 1972, 86 Stat. 652; Pub. L. 95-563, § 14(i), Nov. 1, 1978, 92 Stat. 2391; Pub. L. 96-417, title V, § 509, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 97-164, title I, § 133(a), Apr. 2, 1982, 96 Stat. 39; Pub. L. 102-572, title IX, §§ 902(a), 907(b)(1), Oct. 29, 1992, 106 Stat. 4516, 4519; Pub. L. 104-320, § 12(a), Oct. 19, 1996, 110 Stat. 3874.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 250(1) (Mar. 3, 1911, ch. 231; § 145, 36 Stat. 1136).

District courts are given concurrent jurisdiction of certain claims against the United States under section 1346 of this title. (See also reviser's note under that section and section 1621 of this title relating to jurisdiction of the Tax Court.)

The proviso in section 250(1) of title 28, U.S.C., 1940 ed., relating to claims growing out of the Civil War, commonly known as "war claims," and other claims which had been reported adversely before March 3, 1887 by any court, department, or commission authorized to determine them, were omitted as obsolete.

The exception in section 250(1) of title 28, U.S.C., 1940 ed., as to pension claims appears in section 1501 of this title.

Words "in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable" were omitted as unnecessary since the Court of Claims manifestly, under this section will determine whether a petition against the United States states a cause of action. In any event, the Court of Claims has no admiralty jurisdiction, but the Suits in Admiralty Act, sections 741-752 of title 46, U.S.C., 1940 ed., Shipping, vests exclusive jurisdiction over suits in admiralty against the United States in the district courts. *Sanday & Co. v. U.S.*, 1932, 76 Ct.Cl. 370.

For additional provisions respecting jurisdiction of the court of claims in war contract settlement cases

see section 114b of Title 41, U.S.C., 1940 ed., Public Contracts.

Changes were made in phraseology.

#### REFERENCES IN TEXT

Sections 6 and 10(a)(1) of the Contract Disputes Act of 1978, referred to in subsec. (a)(2), are classified to sections 605 and 609(a)(1), respectively, of Title 41, Public Contracts.

The Tennessee Valley Authority Act of 1933, referred to in subsec. (c), is act May 18, 1933, ch. 32, 48 Stat. 58, as amended, which is classified generally to chapter 12A (§831 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 831 of Title 16 and Tables.

#### AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-320, § 12(a)(2), struck out par. (3) which read as follows: "To afford complete relief on any contract claim brought before the contract is awarded, the court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief. In exercising this jurisdiction, the court shall give due regard to the interests of national defense and national security."

Subsecs. (b), (c). Pub. L. 104-320, § 12(a)(1), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1992—Subsec. (a)(1). Pub. L. 102-572, § 902(a)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsec. (a)(2). Pub. L. 102-572, § 907(b)(1), inserted before period at end "including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act".

Pub. L. 102-572, § 902(a)(2), substituted "Court of Federal Claims" for "Claims Court".

Subsec. (b). Pub. L. 102-572, § 902(a)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

1982—Subsec. (a)(1). Pub. L. 97-164 designated first two sentences of existing first undesignated paragraph as subsec. (a)(1) and substituted "United States Claims Court" for "Court of Claims".

Subsec. (a)(2). Pub. L. 97-164 designated third, fourth, and fifth sentences of existing first undesignated paragraph as par. (2) and substituted "The Claims Court" for "The Court of Claims" and "arising under section 10(a)(1) of the Contract Disputes Act of 1978" for "arising under the Contract Disputes Act of 1978".

Subsec. (a)(3). Pub. L. 97-164 added par. (3).

Subsec. (b). Pub. L. 97-164 designated existing second undesignated paragraph as subsec. (b) and substituted "United States Claims Court" for "Court of Claims", "conduct of, the Tennessee Valley Authority, or" for "actions of, the Tennessee Valley Authority, nor", "Tennessee Valley Authority Act of 1933" for "Tennessee Valley Authority Act of 1933, as amended," and "actions by or against the Authority" for "suits by or against the Authority".

1980—Pub. L. 96-417 substituted "Court of Claims of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action" for "in suits" in second par.

1978—Pub. L. 95-563 provided that the Court of Claims would have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

1972—Pub. L. 92-415 inserted provisions authorizing the court to issue orders directing restoration to office or position, placement in appropriate duty or retirement status and correction of applicable records and to issue such orders to any United States official and to remand appropriate matters to administrative and executive bodies with proper directions.

1970—Pub. L. 91-350 specified that the term “express or implied contracts with the United States” includes express or implied contracts with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration.

1954—Act Sept. 3, 1954, inserted “; actions involving Tennessee Valley Authority” in section catchline and altered the form of first par. to spell out the general jurisdiction of the Court in paragraph form rather than as clauses of the par.

1953—Act July 28, 1953, substituted “United States Court of Claims” for “Court of Claims” near beginning of section, and inserted last par.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 12(b) of Pub. L. 104-320 provided that: “This section [amending this section and section 3556 of Title 31, Money and Finance, and enacting provisions set out as notes under this section and section 3556 of Title 31] and the amendments made by this section shall take effect on December 31, 1996 and shall apply to all actions filed on or after that date.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 902(a) of Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

Section 907(b)(2) of Pub. L. 102-572 provided that: “The amendment made by paragraph (1) [amending this section] shall be effective with respect to all actions filed before, on, or after the date of the enactment of this Act [Oct. 29, 1992], except for those actions which, before such date of enactment, have been the subject of—

“(A) a final judgment of the United States Claims Court, if the time for appeal of that judgment has expired without an appeal having been filed, or

“(B) a final judgment of the Court of Appeals for the Federal Circuit.”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92-415 provided that: “This Act [amending this section] shall be applicable to all judicial proceedings pending on or instituted after the date of its enactment [Aug. 29, 1972].”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-350 applicable to claims and civil actions dismissed before or pending on July 23, 1970, if the claim or civil action was based upon a transaction, omission, or breach that occurred not more than six years prior to July 23, 1970, notwithstanding a determination or judgment made prior to July 23, 1970, that the United States district courts or the United States Court of Claims did not have juris-

diction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States, see section 2 of Pub. L. 91-350, set out as a note under section 1346 of this title.

#### SAVINGS PROVISION

Section 12(e) of Pub. L. 104-320 provided that:

“(1) ORDERS.—A termination under subsection (d) [set out below] shall not terminate the effectiveness of orders that have been issued by a court in connection with an action within the jurisdiction of that court on or before December 31, 2000. Such orders shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

“(2) PROCEEDINGS AND APPLICATIONS.—(A) a termination under subsection (d) shall not affect the jurisdiction of a court of the United States to continue with any proceeding that is pending before the court on December 31, 2000.

“(B) Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if such termination had not occurred. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

“(C) Nothing in this paragraph prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that proceeding could have been discontinued or modified absent such termination.”

#### SUNSET PROVISION

Section 12(d) of Pub. L. 104-320 provided that: “The jurisdiction of the district courts of the United States over the actions described in section 1491(b)(1) of title 28, United States Code (as amended by subsection (a) of this section) shall terminate on January 1, 2001 unless extended by Congress. The savings provisions in subsection (e) [set out above] shall apply if the bid protest jurisdiction of the district courts of the United States terminates under this subsection.”

#### STUDY ON CONCURRENT JURISDICTION

Section 12(c) of Pub. L. 104-320 provided that: “No earlier than 2 years after the effective date of this section [Dec. 31, 1996], the United States General Accounting Office shall undertake a study regarding the concurrent jurisdiction of the district courts of the United States and the Court of Federal Claims over bid protests to determine whether concurrent jurisdiction is necessary. Such a study shall be completed no later than December 31, 1999, and shall specifically consider the effect of any proposed change on the ability of small businesses to challenge violations of Federal procurement law.”

#### RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

See Appendix to this title.

#### CROSS REFERENCES

Admiralty suits against United States, jurisdiction of district courts, see sections 741 et seq. and 781 et seq. of Title 46, Appendix, Shipping.

Costs, where United States is party, see section 2412 of this title.

District courts, concurrent jurisdiction of actions or claims not exceeding \$10,000, see section 1346 of this title.

Limitation of actions, see section 2501 of this title.

Procedure in Court of Federal Claims, see section 2501 et seq. of this title.

Tax Court jurisdiction, see section 7441 et seq. of Title 26, Internal Revenue Code.

Tennessee Valley Authority, use of patents by, see section 831r of Title 16, Conservation.

War contracts, jurisdiction and procedure to enforce termination claim, see sections 113, 114 of Title 41, Public Contracts.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409a of this title; title 12 section 216b; title 16 section 460jjj-2; title 20 section 1132f-10; title 22 section 3862; title 25 sections 1300i-11, 3001; title 41 sections 114, 602; title 42 sections 2297e-3, 2297h-3, 4654; title 45 section 1018; title 46 App. section 1242; title 47 section 606.

**§ 1492. Congressional reference cases**

Any bill, except a bill for a pension, may be referred by either House of Congress to the chief judge of the United States Court of Federal Claims for a report in conformity with section 2509 of this title.

(June 25, 1948, ch. 646, 62 Stat. 941; Pub. L. 89-681, §1, Oct. 15, 1966, 80 Stat. 958; Pub. L. 97-164, title I, §133(b), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102-572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §257 (Mar. 3, 1911, ch. 231, §151, 36 Stat. 1138).

This section contains only the jurisdictional provision of section 257 of title 28, U.S.C., 1940 ed. The procedural provisions are incorporated in section 2509 of this title.

Changes were made in phraseology.

## AMENDMENTS

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1982—Pub. L. 97-164 substituted “chief judge of the United States Claims Court” for “chief commissioner of the Court of Claims”.

1966—Pub. L. 89-681 substituted provisions allowing any bill, except a bill for a pension, to be referred by either House of Congress to the chief commissioner of the Court of Claims for a report in conformity with section 2509 of this title for provisions giving the Court of Claims jurisdiction to report to either House of Congress on any bill referred by such House, except a bill for a pension, and to render judgment if the claim against the United States represented by the referred bill was one over which the court had jurisdiction under other Acts of Congress.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2509 of this title; title 17 section 502.

**[§ 1493. Repealed. July 28, 1953, ch. 253, § 8, 67 Stat. 226]**

Section, act June 25, 1948, ch. 646, 62 Stat. 941, authorized Court of Claims to give legal advice to heads of executive departments in matters referred to it by the heads, if Court had jurisdiction over the matters.

**§ 1494. Accounts of officers, agents or contractors**

The United States Court of Federal Claims shall have jurisdiction to determine the amount, if any, due to or from the United States by reason of any unsettled account of any officer or agent of, or contractor with, the United States,

or a guarantor, surety or personal representative of any such officer, agent or contractor, and to render judgment thereof,<sup>1</sup> where—

(1) claimant or the person he represents has applied to the proper department of the Government for settlement of the account;

(2) three years have elapsed from the date of such application without settlement; and

(3) no suit upon the same has been brought by the United States.

(June 25, 1948, ch. 646, 62 Stat. 941; July 28, 1953, ch. 253, §9, 67 Stat. 226; Sept. 3, 1954, ch. 1263, §44(c), 68 Stat. 1242; Pub. L. 97-164, title I, §133(c)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102-572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §287 (Mar. 3, 1911, ch. 231, §180, 36 Stat. 1141; Feb. 13, 1925, ch. 229, §3, 43 Stat. 939).

Only the jurisdictional provisions of section 287 of title 28, U.S.C., 1940 ed., are contained in this section. The procedural provisions are incorporated in section 2511 of this title.

Changes were made in phraseology.

## AMENDMENTS

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1982—Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims”.

1954—Act Sept. 3, 1954, struck out “United States” from name of Court of Claims.

1953—Act July 28, 1953, substituted “United States Court of Claims” for “Court of Claims”, inserted “to or from” after “due”, and inserted “and to render judgment thereon,”.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

## CROSS REFERENCES

Procedure on accounts of officers, agents, or contractors, see section 2511 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2511 of this title.

**§ 1495. Damages for unjust conviction and imprisonment; claim against United States**

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.

(June 25, 1948, ch. 646, 62 Stat. 941; Pub. L. 97-164, title I, §133(c)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102-572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

## HISTORICAL AND REVISION NOTES

Based on section 729 of title 18, U.S.C., 1940 ed., Crimes and Criminal Procedure (May 24, 1938, ch. 266, §§1-4, 52 Stat. 438).

<sup>1</sup> So in original. Probably should be “thereon.”.